IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELALTE JURISDICTION
CRIMINAL WRIT PETITION NO. 2059 OF 2005

Shri Jaywant Shankar Kenjale ...Petitioner.

V/s

1. Shri Vasant Narayan Jadhav
and anr. ...Respondents.

Mr. M.N. Dhamal for the petitioner.

Mr. S. J. Patil for respondent No.1.

Mrs. M.M. Deshmukh, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 4th August, 2006

P.C.:

1. Heard the learned Counsel for the petitioner and the learned Counsel for the respondent No.1.

2. Rule. Returnable forthwith. Respondents waive service.

3. Petitioner is challenging the order passed by the Trial Court on an application filed by the respondent - accused for recalling the complainant for further cross-examination.

4. It is submitted by the learned Counsel appearing on behalf of the petitioner that after cross-examination of the petitioner was completed, application was preferred by the

accused seeking permission to recall the complainant for further cross-examination. He submitted that the Trial Court allowed the said application. It is submitted that from the application which was filed by the accused, it is abundantly clear that there was no fresh material available with the accused which would justify recalling the complainant for further cross-examination.

5. The learned Counsel appearing on behalf of respondent No.1 submitted that the petitioner was recalled for further cross-examination as it was felt that the earlier cross-examination was not properly conducted.

6. In my view, law on this point is quite well settled. Though the Court has power to recall the witness even in summons case which is evident from the provisions of section 311 of Cr.P.C., yet this discretion has to be exercised in the interest of justice and only after the Magistrate is satisfied that the accused has some material in his possession and he was prevented from asking questions on the basis of the said material to the complainant. In the present case, even according to the accused in his own application, no such ground has been made out. The Trial Court, therefore, was not justified in passing the said order. The impugned order is, therefore, set aside. Criminal Writ Petition is allowed in the above terms. Hearing of the trial is expedited.

7. Petition is disposed of accordingly.

(V.M. KANADE, J.)